



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,088	09/09/2003	Matthew Frushour	11924.001	5907

28309 7590 02/22/2006

BOWERS HARRISON LLP
GARY K. PRICE, ESP.
25 RIVERSIDE DRIVE
PO BOX 1287
EVANSVILLE, IN 47706-1287

EXAMINER

KYLE, MICHAEL J

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/660,088

Applicant(s)

FRUSHOUR, MATTHEW

Examiner

Michael J. Kyle

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-11 and 13-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-11 and 13-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3, 6-11, and 14-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodgers (U.S. Patent No. 3,244,443) in view of Smith, Jr. ("Smith", U.S. Patent No. 5,611,110). With respect to claims 1, 9, 14, 15, 17, 18, and 20, Rodgers discloses a door holder comprising an elongated arm (10), a first attaching means (14), a magnetic head (21) extending longitudinally from a surface of a wall and having a magnetic surface, a metal plate (22) having first and second sides, and second attaching means (24, 26) for attaching the second side of the metal plate to a door. The magnetic head (21) is secured to the first side of the metal plate by a magnetic force of attraction. The magnetic head and magnetic surface each have a circumference in alignment with the circumference of the first end of the arm. The magnetic surface has a circumference in alignment with the circumference of the magnetic head. Rodgers discloses the second side of the plate (22) to be secured to a door by nails (24). Rodgers does not disclose the use of adhesive for this function.

3. Smith teaches an arrangement that includes a face plate (15) fastened to a door. Smith discloses the plate may be fastened to the door by "Nails, adhesives, and other means" (column 5, line 11). Smith thereby establishes a mechanical equivalence between nails and adhesive. It would have been obvious to one having ordinary skill in the art at the time of the invention to use

Art Unit: 3677

either nails or adhesive, as taught by Smith, as these methods of attaching are equivalent and interchangeable within the art.

4. With respect to claims 2, 3, 10, and 11, Rodgers discloses the magnetic surface (outward facing surface of 21) to have a flat surface, and the metal plate (22) has flat surfaces on the first and second sides.

5. With respect to claims 5, 6, 13, and 16, Rodgers discloses the first attaching means to be a screw (14) disposed at the second end (11) of the elongated arm (10) and the magnetic force is broken by pulling the door such that the plate and arm are separated.

6. With respect to claims 8 and 21, Rodgers discloses the screw to have a threaded outside wall.

7. Claims 7 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodgers in view of Smith as applied to claims 1 and 9 above, and further in view of Morita (U.S. Patent No. 4,453,294). Rodgers shows the metal plate (22) having a substantially circular configuration, but fails to show the plate to have a rectangular configuration.

8. Morita teaches a magnetic arrangement where a plate (2, 12) in contact with the magnet (1, 11) may be either circular (2, as shown in figure 1) or rectangular (12, as shown in figure 3). One having ordinary skill in the art would recognize that these shapes are equivalent and interchangeable Morita shows either maybe used to reach the same result. It would have been obvious to one having ordinary skill in the art at the time of invention to make the plate of Rodgers circular or rectangular as Morita shows these shapes to be equivalent.

Art Unit: 3677

9. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodgers in view of Smith as applied to claims 1 and 9 above, and further in view of Troy (U.S. Patent No. 5,575,514). Rodgers shows multiple screws (14) disposed at the second end of the elongated arm. Rodgers does not show a single screw aligned with the elongated arm.

10. Troy teaches a door stop with an elongated arm (10) having a single screw (20) disposed at a second end thereof, and aligned with the elongated arm. Aligning the screw with the arm allows for a more balanced elongated arm. Using a single screw reduces the amount of parts required for the assembly. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Rodgers, such that the elongated arm includes only a single screw, aligned with the elongated arm, at the second end thereof, as taught by Troy, to reduce the amount of parts in the assembly.

Response to Amendment

11. Examiner notes receipt of the Request for Continued Examination (RCE) filed on January 5, 2006, along with related claims and remarks. Examiner notes that the claims submitted with the RCE shows changes to the claims denoted by the underlined and crossed out text. This underlined text is not new to these claims, and was submitted with the amended claims of March 25, 2005. The set of claims submitted with the RCE appear to be identical to those filed on March 25, 2005, therefore any changes shown to claims submitted with the RCE are improper. Additionally, the status identifiers with the RCE claims are also improper. For example, claim 1 should be "Previously presented", as this claim was not amended by the latest filing, and was

Art Unit: 3677

previously presented on March 25, 2005. However, these errors have not precluded an action on the merits, but should be addressed in any response to this Office Action.

Response to Arguments

12. Applicant's arguments filed January 5, 2006, have been fully considered but they are not persuasive.

13. With respect to independent claims 1 and 9, applicant argues the combination of Rodgers and Smith fails to show the overall results of an easy to manufacture and install door stop. Examiner respectfully disagrees. Rodgers meets all of the claimed structural limitations of claims 1 and 9, except for the adhesive surface. Applicant does not appear to contest this. Rodgers teaches nails to secure the metal plate to the door. Smith teaches that either nails or adhesive may be used when securing objects, thus establishing equivalence between the two. One of ordinary skill in the art would recognize the either may be used.

14. With respect to claims 5 and 13, applicant argues that Rodgers uses two screws, not a single screw as claimed. Examiner notes that this was addressed in the Office Action of July 5, 2005, where the claims with this limitation were rejected by the combination of Rodgers, Smith, and Troy. Applicant has not addressed this rejection.

15. Applicant's arguments with respect to claims 7 and 19 have been considered but are moot in view of the new ground(s) of rejection. To more clearly show that it is obvious to change the shape of a magnetic plate, examiner has incorporated Morita into the rejection. Morita teaches a plate that may be circular, similar to that of Rodgers, or rectangular, as presently claimed. Morita establishes circular and rectangular plates to be equivalent.

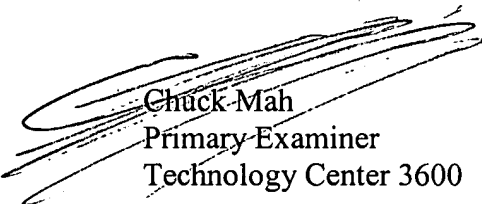
Conclusion

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Kyle whose telephone number is 571-272-7057. The examiner can normally be reached on Monday - Friday, 8:30 am - 5:00 pm.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 571-272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mk


Chuck Mah
Primary Examiner
Technology Center 3600